

Government of India
Ministry of Labour & Employment,
Central Government Industrial Tribunal-Cum-Labour Court-II, New Delhi.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 38/2010

Date of Passing Award- 27th January, 2023.

Between:

Shri Tilak Ram,
S/o Shri Malkhan Singh,
R/o-Indra Vihar Colony, Sunehra Road,
Roorkee, Haridwar.

Workman

Versus

The Registrar,
IIT Roorkee,
Haridwar.

Management

Appearances:-

Shri N S Berchhiwal,
(Advocate)
Shri Sanjay Rawat
(Advocate)

For the Workman

For the Management

A W A R D

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of I.I.T, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-42012/192/2010 (IR(DU) dated 27/10/2010 to this tribunal for adjudication to the following effect.

“Whether the action of the management IIT, Roorkee in disengaging /terminating the services of Shri Tilak Ram temporary sweeper w. e. f. 01/06/2007 without any notice and compensation in violation of section 25F, G and H of the I D Act 1947, is legal and justified? If not , what relief the workman is entitled to?”

As stated in the claim petition the claimant workman was working as a temporary sweeper (unskilled worker) in the establishment of the management since 17.09.1999. When he was discharging his duties to the satisfaction of the employer with sincerity, suddenly on 01.06.2007, the management discontinued his employment without assigning any reason. No notice of termination or notice pay was paid to him in gross violation of the provisions of ID Act, though he was working continuously since 1999 and had worked for 240 days in the calendar year preceding the date of his termination. The workman raised a dispute before the conciliation officer, where steps were taken to conciliate and resolve the issue. That attempt since failed, the Appropriate Govt. referred the matter for adjudication of the dispute. It has also been stated that the workman was in the pay roll of the management of IIT Roorkee and his is evident from the correspondence made by the head of IIT Roorkee to it's Deputy Director. He was also getting Bonus like the regular employees which are evident from the payment vouchers too. Hence the termination of his service by the employer without assigning any reason and without complying with the provisions of sec 25F of the ID Act is illegal and the management be directed to reinstate him in service with immediate effect with back wages from the date of termination as he is unemployed since then.

The management of IIT Roorkee appeared and filed written statement refuting the stand of the claimant workman with regard to the alleged illegal termination. The management has denied it's relationship with the claimant as the employer. However, it has been admitted that the claimant was working for the management as a temporary sweeper. It has been stated that since the year 1996, the claimant was working as a part time temporary sweeper in the guest house of the center fro continuing education in the premises of IIT Roorkee. The centre for continuing education has been set up by IIT Roorkee for imparting training to outsiders from corporate sectors and organizes the training program on grant received from the said corporate organization. In order to provide accommodation to the participants, there is a guest house which is being run utilizing the self generated fund of the centre of continuing education. In order to maintain the guest house some persons are engaged purely on need basis and the persons engaged are part time temporary workers having no relationship with IIT Roorkee and it's academic activities.

So far as the claimant is concerned, he was engaged as a part time sweeper in the guest house. His engagement being on need basis, it was never continuous. From 01.11.1996 to 31.05.2007, he had worked in the guest house with intermittent discontinuance. He had never worked for 240 in a calendar year nor in the pay roll of IIT Roorkee. The management of IIT Roorkee had never terminated the service of the workman. In the year 2005, the management of IIT Roorkee, in order to control the haphazard employment of adhoc workers, decided to create a central agency through which employment to adhoc posts shall be made through that agency selected through a bidding process and approved by the appropriate authority. It was decided that the adoch engagement of skilled, semiskilled, unskilled and highly skilled persons shall be made through the said selected agency/contractor, who shall extend the benefits like Provident Fund, Health Insurance, Gratuity and Bonus etc. all the workmen concerned were duly informed to register themselves with the agency/contractor. But the claimant workman chooses not to register himself and opted not to work under the contractor and as such abandoned his work. Later on he along with some other persons approached the Hon'ble High Court of Utrakhand at Nainital, praying for regularization of their service. Subsequently, they withdrew the writ petition and raised a dispute before the labour commissioner. The management did not agree to the demand of the claimant. Hence this reference. Management has also denied that the claimant is unemployed and entitled to reinstatement with back wages.

No separate and distinct issues were framed and the contesting claimant and respondent were called upon to adduce evidence on the issues as per the reference. The claimant had filed an application seeking a direction to the management to produce the relevant documents qua the dispute. In the application there was no description of the specific documents required to be produced from the possession of the Respondent. The only plea taken is that the documents are in possession of the Respondent. Considering the objection taken by the Respondent, this Tribunal passed the order giving liberty to the claimant to adduce secondary evidence in respect of the documents.

The claimant examined himself as WW1 and produced few documents which have been marked in a series of WW1/1 to WW1/10. These documents are the photocopies of the Identity

card, Representation to the head of IIT Roorkee requesting regularization of service, internal correspondence between the head of the Guest House and the head of continuing education centre requesting sanction of Bonus to the claimant and other persons working in the guest house, the correspondence made to the claimant by the Head of the Guest House informing him that the work done by him shall hence forth be done through the Agency selected Tender process and asking him to register his name with the Agency/ Contractor to avoid discontinuance, representation alleging illegal termination, other correspondences between the Prof and Head of the Centre for Continuing Education to the Dy. Director IIT Roorkee evidencing the fact that the claimant was working in the guest house since 1989. Besides these documents the claimant has filed photocopies of the vouchers through which he was getting payment from the centre for continued education and photocopies of the cheques for the payment.

On behalf of the Respondent, it's Asst Registrar Shri Bane Singh Meena testified as MW1 and proved the documents as MW 1/1 to MW1/3. The documents are the notification dated 9th Sept 2005, about the decision taken for out sourcing the work through the Agency, the Representation received from the claimant. Both the witnesses were cross examined at length by the adversaries.

During course of argument the learned AR for the Respondent submitted that the claimant was never an employee of IIT Roorkee and was engaged on temporary basis by the centre for continuing learning. The centre has a guest house which is being managed utilizing the Fund received from the corporate establishment for which the training program is organized. Thus there is no constant need for the workforce and the engagement of staff was owned basis only and during the time when any training program is undertaken. The management has indicated the days in the WS during which the claimant was engaged and the same was never continuous as claimed by the claimant. Thus the management argued that the burden lies with the claimant to prove that he was in continuous employment of the Management of IIT Roorkee and had worked for 240days in the calendar year preceding the date of his termination.

The counter argument of the workman is that the photocopies of the document exhibited by the workman while adducing evidence, sufficiently proves the employer employee

relationship and continuous engagement since 1999. Otherwise the Respondent has admitted about non service of termination notice, which makes claimant entitled to the relief sought for.

In this proceeding the claimant has all along maintained that he was working for the Respondent IIT Roorkee in it's guest house situated in the premises. He was getting his salary at the end of the month, though calculated on daily wage basis. To support the oral evidence several vouchers (photocopies) have been placed on record and the management has not denied these documents. The letters written by the then head of the guest house to the Dy. Director having reference of the claimant has also been placed on record as Exits to prove that the claimant was the employee of IIT Roorkee. The witness examined by the Respondent has also admitted during cross examination that the claimant was working as a sweeper in the guest house during the relevant period, but his engagement was not by IIT Roorkee, but by the Centre for Continuing Learning. The claimant could not place on record the documents in support of his stand that he was under the employment of IIT Roorkee. In such a situation, the claim is to be examined from the other circumstances i.e the effective control test as has been observed in several pronouncements by the Hon'ble Apex Court including the case of **Steel Authority Of India VS National Union Waterfront Workers Union, reported in 92001) 7 SCC,1**. In the case of **Workmen of Food Corporation of India VS Food Corporation of India, AIR 1985(SC) 670**, the Apex Court pronounced that the contract of employment always discloses a relationship of command and obedience between them. When the same is proved from the evidence, relationship of employer and employee is established.

In this proceeding the claimant has stated that he was working exclusively in the Guest House as a sweeper. The ID Card, and the vouchers filed by the claimant clearly prove that he was working as a daily wage sweeper in the Guest House. The assertion of the management that the guest house of the centre for continuing education has nothing to do with the Respondent has not been disproved by the claimant. The vouchers filed by the claimant also proves that he was getting his remuneration from that centre only. Hence from the oral and documentary evidence adduced by the claimant coupled with the oral evidence of the MW 1, it is proved that the employer and employee relationship was not existing between the Respondent and the claimant during the

relevant time as the Respondent was not exercising effective control and supervision over the work of the claimant during the said period.

Industrial dispute has been raised by the workman and reference has been made by the Appropriate Govt. to adjudicate if any illegality has been committed by the management in disengaging the service of the claimant, and if so, to what benefit he is entitled to. The management has forcefully argued and led evidence to show that the claimant was not a regular employee of the Respondent. Thus there arises no question of terminating his service or refusing his reinstatement. The entire claim is based upon some misconception of facts. A document has been exhibited by the Respondent which has not been disputed by the claimant. As per this document the Respondent, in order to regulate the haphazard engagement of adhoc employees, in the year 2005, resolved to out source the skilled, semiskilled and highly skilled persons through a contractor selected through tender process. After selection of the contractor and in order to ensure that the persons working on temporary engagement are not thrown out of their job, notices were served well ahead on them. The said employees were instructed to register their names with the contractor. The witness examined by the management has stated that the decision taken in this regard was progressive as the contractor was to extend the benefits of Provident Fund, Health Insurance etc to the employees engaged. But the claimant opted out of the said arrangement and voluntarily abandoned the engagement. Hence his claim as has been advanced is not maintainable.

The witness has also stated that the claimant was never in continuous service of the Respondent, nor had worked for 240 days in a calendar year, making it obligatory for the Respondent to comply the provisions of sec 25F of The ID Act. The claimant during cross examination has admitted that the Ext WW1/6 to WW1/10 no way proves his continuous engagement and work for 240 days in the preceding calendar year. Thus the claimant has failed to discharge this burden of proof too.

Having considered the submissions and appraisal of the record and documents filed this Tribunal is of the view that there is no dispute on facts that the claimant was not a regular employee of the Respondent, but was engaged as a sweeper on daily wage basis, though he was made to work for a long period with break, when his

engagement came to an end in the year 2007. It has been admitted by the management witness MW1 that no notice pay or retrenchment compensation was paid to the claimant when his engagement was discontinued. But that does not appear to be in gross violation of the provisions of sec 25F and 25 G of the ID Act since the claimant has not succeeded in proving that he had worked for 240 days in the preceding calendar year of termination. Moreover, the evidence on record proves that the service of the claimant was not terminated, but he voluntarily stopped reporting for duty, as the decision of the management to introduce the contractor and to outsource the man power was not acceptable to him. Hence the relief of reinstatement with back wages as claimed is held not maintainable. The witness examined by the Respondent during cross examination admitted that the other persons working with the claimant in the guest house are still working in the premises of the Respondent and have been provided accommodation in the premises of the Respondent and the medical facilities has been extended to them. . He also stated that the management is ready and willing to retain the claimant for work provided he comes through the contractor who is the service providing Agency. The said service providing Agency is not a party to this proceeding. Hence no direction can be issued to the said Agency to engage the claimant for work. But it is felt proper to direct the Respondent to initiate a proposal with the said Agency to consider engagement of the claimant for work as a sweeper. Hence, ordered.

ORDER

The claim advanced by the claimant is held devoid of merit and rejected. The reference is accordingly answered. However it is kept open for the Respondent to consider the case of the claimant sympathetically and take up the matter with the service providing Agency for his engagement as a sweeper in the premises of the Respondent as has been done in respect of the persons working with the claimant in the Guest House of the Centre for Continuing Education. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

Presiding Officer.
CGIT-Cum-Labour Court.
27th January, 2023

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